

FILED**DEC 22 2015****SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**Your name: John Doe SubscriberAddress: Assigned IP Address 76.103.148.240

Phone Number: _____

E-mail Address: _____

Pro Se

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**Malibu Media, LLCCase Number: 3:15-cv-04289-WHA**NOTICE OF MOTION AND MOTION**Plaintiff(s),MOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO
SERVE THIRD-PARTY SUBPOENA PRIOR TO RULE 26(f)
CONFERENCE AS MOOT

vs.

John Doe Subscriber AssignedIP Address 76.103.148.240**AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**DATE: N/ATIME: N/ACOURTROOM: N/ADefendant(s).JUDGE: Hon. WILLIAM ALSUPPLEASE TAKE NOTICE that on [date] N/A, at
[time] N/A, or as soon thereafter as the matter can be heard, in the courtroom of theHonorable [judge's name] WILLIAM ALSUPlocated at [address of courthouse and courtroom number] N/AI will,
and hereby do, move for an order granting the attachedMOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO
SERVE THIRD-PARTY SUBPOENA PRIOR TO RULE 26(f)
CONFERENCE AS MOOT

NOTICE OF MOTION AND MOTION TO _____

CASE NO. 3:15-cv-04289-WHA; PAGE 1 OF 8 [JDC TEMPLATE]

MOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO SERVE THIRD-PARTY
SUBPOENA PRIOR TO RULE 26(f) CONFERENCE AS MOOT

The motion will be based on this Notice of Motion and Motion, the Memorandum of
Points and Authorities below, the Declaration(s) of [names of people who wrote declarations] _____
John Doe Subscriber Assigned IP Address 76.103.148.240 Defendant

_____ and the [Proposed] Order filed herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

*Before completing this section, read Chapter 11 of the Pro Se Handbook. This section
should include the following separate parts. Number each part.*

1. *A table of contents and a table of authorities, if the memorandum is longer than ten pages;*
2. *A statement of the issues you want the court to decide;*
3. *A brief statement of the facts that are relevant to this motion;*
4. *Your **argument** for why the judge should grant this motion. Include citations to relevant cases and law. When you refer to specific facts, those facts should also appear in a DECLARATION, which you must submit with this motion. After you state a fact in this section of the motion, state what paragraph of the DECLARATION contains the fact you are using to support your position.*

Pursuant to the Court's order dated October 18, 2015, pro se Defendant John Doe Subscriber IP
Address 76.103.148.240 respectfully moves for an order to quash plaintiff's motion for leave to
serve third-party subpoena prior to rule 26(f) conference as moot.

I have never committed the acts alleged by the plaintiff regarding distribution of copyright
materials owned by Malibu Media. I have never authorized any such actions on my home
network. This allegation against me is false and made under the misinformed and mistaken
belief that I, the subscriber and assignee of IP 76.103.148.240 from my ISP, proves and
mandates me to be the infringer without question. The IP address however is an address to
my router and not my computer.

NOTICE OF MOTION AND MOTION TO _____
MOTION TO QUASH PLAINTIFF'S MOTION FOR
LEAVE TO SERVE THIRD-PARTY SUBPOENA
PRIOR TO RULE 26(f) CONFERENCE AS MOOT

CASE NO. 3:15-cv-04289-WHA _____; PAGE 2 OF 8 [JDC TEMPLATE]

[Insert as many copies of this page as you need. Make extra copies before you write on it.]

With a wireless router, I can then provide other computers and devices joined to my network with their own IP addresses, acting like an ISP myself. Just like home addresses there is a registered subscriber. It is illogical to tie the home owner of an address to the activities of other people that use the same address. Similarly, it is illogical to hold the registered subscriber of an IP address accountable to the actions of others using that same IP address to access the Internet. Other users are using the same IP address to get to the Internet through my router. In turn, home networks are an extension of an ISP through modern wi-fi routers. Therefore, due to the nature of the security problems in the form of viruses, spyware, and hackers gaining access to my wireless router on the Internet and the constant risk to me simply by joining my computer to the Internet through my ISP, it is impossible for me the Defendant to prevent, let alone even know, if and when unauthorized use of my network has been used to perform the allegations associated to my IP assigned wireless router, not to my computer. Furthermore, after receiving the subpoena and motion for leave from Comcast filed by the I began researching on the Internet to try and understand the matter of which I was being alleged against. My search results returned dozens of public records and court filings almost identical to the subpoena and order that I have been presented with. These cases span across the United States, including the District Courts of Northern California, Pennsylvania, D.C, Ohio, and others. Mine is another case, among tens of thousands, where Malibu Media alleges that John Doe subscriber of an ISP provider is the infringer and so therefore Malibu Media is privileged to obtaining personal information of John Doe through his ISP. From other accounts of previous defendants, these subpoenas that are allowed are typically followed by settlement and harassment letters from Plaintiff. These letters demand payment for settlement in the of dollars. When settlements are not agreed to by the John Doe, the Plaintiff rarely serves the Named defendant for further litigation. The volume of cases and outcomes of either settlement or no further litigation after receiving John Doe's personal information makes it questionable

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[Insert as many copies of this page as you need. Make extra copies before you write on it.]

whether I am at threat of personal harassment from Malibu Media by means of threatening or

embarrassment of having my personal information made public regarding pornographic material.

For these reasons stated above, I, John Doe Movant respectfully ask that this Motion to quash both of the Plaintiffs Motion for Leave to Serve Third Party Subpoena and the Subpoena to Comcast to provide my personal information be granted.

Here are some additional cases and findings from my Internet research of other Malibu Media vs Doe that are pertinent to my requested motion.

In a recent decision in the Southern District of New York in Manhattan, in Malibu Media v. Doe , 15 CV 4369 AKH, Judge Alvin K. Hellerstein has denied Malibu Media's ex parte motion for permission to serve a subpoena on the internet service provider.

July 6, 2015, Decision of Hon. Alvin K. Hellerstein, denying ex parte motion for discovery
Judge Hellerstein reasoned as follows:

First, it is doubtful whether Malibu has in fact established a prima facie claim here. A prima facie copyright infringement claim consists of two elements: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., Inc. 499 U.S. 3400, 361 (1991). As Judge Marrero observed in Next Phase Distribution, Inc. v. John Does 1-27, 284 F.R.D. 165, 171 (S.D.N.Y. 2012), "if the Motion Picture is considered obscene, it may not be eligible for copyright protection." Further, even if Malibu's copyrights are valid, Malibu has not established a violation by the individual to whom the relevant IP address is registered. As Judge Oetken explains, "[t]he fact that a copyrighted work was illegally downloaded from a certain IP address does not necessarily mean that the owner of that IP address was the infringer. Indeed, the true infringer could just as easily be a third party who had access to the internet connection, such as a son or daughter, houseguest, neighbor, or customer of a business offering internet connection.

Patrick Collin[s], Inc. v. Does 1-6, No. 12-cv-2964, 2012 WL 2001957, at *1 (S.D.N.Y. June 1, 2012) (internal

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citations omitted); see also *In re BitTorrent Adult Film Copyright Infringement Cases*, 296 F.R.
 80, 84 (E.D.N.Y. 2012) (“[T]he assumption that the person who pays for Internet access at a
 given location is the same individual who allegedly downloaded a single sexually explicit film
 is tenuous, and one that has grown more so over time.”); *Digital Sin, Inc. v. John Does 1-176*,
 239, 242 (S.D.N.Y. 2012) (Judge Nathan finding that approximately 30% of John Does
 identified by their internet service providers are not the individuals who actually downloaded
 the allegedly infringing films). The risk of misidentification is great in a world with ubiquitous
 Wi-Fi, and given courts’ concerns that these sorts of allegations - especially by this plaintiff -
 are likely to coerce even innocent defendants into settling, the risk of misidentification is
 important to protect against. And even if Plaintiff could definitively trace the BitTorrent
 activity in question to the IP-registrant, Malibu conspicuously fails to present any evidence that
 that John Doe either uploaded, downloaded, or even possessed a complete copyrighted video
 file.

For these reasons stated above, I, John Doe Movant respectfully ask that this Motion to quash
 both of the Plaintiffs Motion for Leave to Serve Third Party Subpoena and the Subpoena to
 Comcast to provide my personal information be granted.

*All parties who are making this motion must sign, date, and print their names here. Attach
 another page if you need to.*

Respectfully submitted,

Date: 12/15/2015

Signature: John Doe

Printed name: John Doe Subscriber IP 76.103.148.240

Pro Se

MOTION TO QUASH PLAINTIFF'S MOTION FOR
 LEAVE TO SERVE THIRD-PARTY SUBPOENA PRIOR
 TO RULE 26(f) CONFERENCE AS MOOT

NOTICE OF MOTION AND MOTION TO

CASE NO. 3:15-cv-04289-WHA; PAGE 5 OF 8 [JDC TEMPLATE]

1 Your name: John Doe Subscriber

2 Address: Assigned IP Address 76.103.148.240

4 Phone Number: _____

5 E-mail Address: _____

6 Pro Se

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 Malibu Media, LLC

Case Number: 3:15-cv-04289-WHA

DECLARATION OF

[name] John Doe

IP ADDRESS 76.103.148.24

12 Plaintiff(s),

14 vs.

John Doe Subscriber Assigned

IN SUPPORT OF MOTION

IP Address 76.103.148.240

MOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO
SERVE THIRD-PARTY SUBPOENA PRIOR TO RULE 26(f)
CONFERENCE AS MOOT

20 Defendant(s).

22 In support of *[write "Plaintiff's" or "Defendant's"]**[title of motion]*, _____
23 Defendant's MOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO SERVE
24 THIRD-PARTY SUBPOENA PRIOR TO RULE 26(f) CONFERENCE AS MOOT

25 I, *[name]* John Doe

26 declare as follows:

27 //

28 //

MOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO
SERVE THIRD-PARTY SUBPOENA PRIOR TO RULE 26(f)
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DECLARATION OF _____

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In the first paragraph, explain who you are and how you are connected to the party or events relevant to the lawsuit. If you are the Plaintiff or Defendant, say so here. If you are a witness, say how you are involved.

1. I am the Defendant.

Due to the nature of Internet technology, having a wireless home router, visitors, and potential unauthorized access gained by hackers, it is nearly, if not impossible, for Defendant to prevent unauthorized use of network associated with Comcast IP 76.103.148.240 for unauthorized uploading or downloading of any content.

2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.

Continue writing facts that support the argument that the Court should grant the motion. Write each fact in a separate paragraph, and number each paragraph. Add additional sheets of paper as necessary. You may only testify to facts or occurrences that you have personal knowledge of or that you personally witnessed. Explain how you know each fact.

3. _____

4. _____

5. _____

6. _____

7. _____

MOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO
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DECLARATION OF _____

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22. _____

WHEREFORE, I respectfully ask the Court to grant this motion, as well as such other relief as may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on [date] 12/15/2015.

Date: 12/15/2015

Signature: John Doe

Printed name: John Doe

Address: _____

Phone Number: _____

MOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO
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DECLARATION OF _____

CASE NO. 3:15-cv-04289-WHA

PAGE NO. 8 OF 8 [JDC TEMPLATE]

1 Your name: John Doe Subscriber

2 Address: Assigned IP Address 76.103.148.240

4 Phone Number: _____

5 E-mail Address: _____

6 Pro Se

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 Malibu Media, LLC

Case Number: 3:15-cv-04289-WHA

**[PROPOSED] ORDER GRANTING
MOTION**

11 Plaintiff(s),

MOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO
SERVE THIRD-PARTY SUBPOENA PRIOR TO RULE 26(f)
CONFERENCE AS MOOT

13 vs.

14 John Doe Subscriber Assigned

15 IP Address 76.103.148.240

18 Defendant(s).

20 The Court has considered *[write "Plaintiff's" or "Defendant's"]* Defendant's

21 *[title of motion]* _____

MOTION TO QUASH PLAINTIFF'S MOTION FOR LEAVE TO
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22 and the accompanying Declaration(s) of *[names]* _____

23 John Doe

24 Finding that good cause exists, the Motion is GRANTED.

25 IT IS SO ORDERED.

26 *[Do not write below this]*

27 Date: _____ *[Judge's signature]* _____

28 *[Judge's name]:* _____

United States District/Magistrate Judge

[PROPOSED] ORDER GRANTING MOTION, CASE NO. 3:15-cv-04289-WH [JDC
TEMPLATE]

CERTIFICATE OF SERVICE

Use this form to show that a paper or document (other than a complaint) was served (sent or delivered) to an opposing party in accordance with Federal Rule of Civil Procedure 5. A different form is needed to serve a complaint under Federal Rule of Civil Procedure 4.

Case name: Malibu Media,LLC,Plaintiff,v. John Doe IP Address 76.103.148.240, Defendant

Case number: 3:15-cv-04289-WHA

What document was served? *(Write the full name or title of the document or documents, e.g., "Plaintiff's Opposition to Defendant's Motion for Summary Judgment.")*

Title(s): Defendant's Motion to Proceed Anonymously

How was the document served? *(Check one.)*

- ☒ Placed in U. S. Mail
☐ Sent by fax
☐ Hand-delivered
☐ Sent by delivery service (e.g., FedEx or UPS)

To whom was the document sent? *(Write the full name, address, and fax number of everyone who was sent the document. Usually, they will be the lawyers for the opposing parties.)*

Comcast Fax #866-947-5587

When were the documents served? *(When were they mailed, faxed, or delivered?)*

Date: 12/15/2015

Who served the documents? *(Whoever puts it into the mail, faxes, hand-deliveres, or sends by delivery service should print his/her name, address and sign. You can also do this yourself.)*

Comcast

I declare under penalty of perjury under the laws of the United States of America that the information in this certificate of service is true and correct.

Signature: John Doe

Printed name: John Doe IP Address 76.103.148.240

Address: n/a